

Robert W. Boatman (009619)
Paul L. Stoller (016773)
Shannon L. Clark (019708)
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
rwb@gknet.com
paul.stoller@gknet.com
SLC@gknet.com

Ramon Rossi Lopez (CA Bar No. 86361)
(admitted *pro hac vice*)
LOPEZ McHUGH LLP
100 Bayview Circle, Suite 5600
Newport Beach, California 92660
Telephone: 949-812-5771
rlopez@lopezmchugh.com

Attorneys for Plaintiffs

James R. Condo (#005867)
Amanda C. Sheridan (#027360)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
Telephone: 602.382.6000
jcondo@swlaw.com
asheridan@swlaw.com

Richard B. North, Jr. (admitted *pro hac vice*)
Georgia Bar No. 545599
Matthew B. Lerner (admitted *pro hac vice*)
Georgia Bar No. 446986
NELSON MULLINS RILEY & SCARBOROUGH LLP
201 17th Street, NW / Suite 1700
Atlanta, GA 30363
Telephone: (404) 322-6000
richard.north@nelsonmullins.com
matthew.lerner@nelsonmullins.com

*Attorneys for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**SUPPLEMENTAL JOINT REPORT ON
PRIVILEGE LOG EFFORTS**

1 Since the filing of the parties' January 21, 2016, Joint Report on Privilege Log Efforts (Doc.
2 450), Bard and Plaintiffs have continued to meet and confer and have reached agreement on the
3 following proposal for resolving privilege log issues going forward:

4 A. The parties agree to further meet and confer on the remaining documents at issue from the
5 prior sampling review, i.e., the disputed entries discussed in Plaintiffs' portion of the Joint
6 Report on Privilege Log Efforts (Doc. 450). The parties will continue to meet and confer
7 and jointly report to the Court on March 4, 2016, as to the remaining disputes, if any. If
8 the parties are not able to resolve the disputes as to those documents the parties propose
9 the following briefing schedule to present those issues to the Court:

- 10 • March 25, 2016 – Plaintiffs' motion
- 11 • April 8, 2016 – Bard's response
- 12 • April 22, 2016 – Plaintiffs' reply

13 B. In addition the parties propose the following:

- 14 • Both sides have proposed categories (see below) into which certain privilege log
15 entries would be organized for meet and confer purposes only.
- 16 • By April 29, 2016, Bard will produce a list of the entries responsive to each of its
17 categories; Plaintiffs will produce a list of the entries they believe fit each of their
18 categories.
- 19 • After the lists are compiled, the parties will agree to a random selection of 25 entries
20 from each of the 14 category lists (350 entries total) and will meet and confer about
21 those documents.
- 22 • In response to the 25 entries from each of Plaintiffs' lists, Bard will either produce the
23 documents on the lists or more specifically describe the documents and its basis for
24 privilege. If Plaintiffs still challenge privilege on any of those items, the parties will
25 meet and confer to try to resolve the challenge.
- 26 • In response to the 25 entries on each of Bard's category lists, Plaintiffs will identify to
27 Bard the entries where they believe Bard has not established a prima facie showing of
28 attorney-client or work product privilege. Bard will then further describe the

documents and its basis for privilege, and the parties will meet and confer as necessary to try to resolve the challenge.

- On May 27, 2016, the parties will file a joint report on their progress and will propose a briefing schedule to resolve the outstanding issues from this meet and confer.
- The parties will then apply the Court's analysis and direction to future rounds of review and meet and confer using the procedure identified above until Plaintiffs have concluded their challenges to Bard's privilege log.
- None of these procedures will be exclusive, exhaustive, or constitute a waiver of either other privilege assertions, other arguments for privilege waiver, or other procedures for resolving privilege log disputes including but not limited to requesting judicial intervention.
- All documents produced by Bard during this meet and confer process will be subject to the Rule 502(d) Order entered on December 1, 2015.

Plaintiffs' Proposed Categories:

1. Entries where no legal personnel are listed as either an author or recipient of the communication.
2. Entries where both the author and the recipient are non-lawyers and an attorney was merely "cc'd" on the communication.
3. Entries that do not identify the author or recipient of the communication.
4. Entries describing an attachment that was not authored by a lawyer and that was sent to a group of both non-lawyers and lawyers for review.
5. Entries describing an attachment that was not by or to an attorney but that merely referenced an attorney.
6. Entries that do not reflect that any legal advice was given or requested.
7. Entries where a non-party is an author, recipient or listed as receiving a copy of the communication so as to have waived any attorney-client privilege.

Bard's Proposed Categories:

1. Documents created directing actions to be taken or describing actions taken as result of the threat of or filing of lawsuits.

2. All communications relating to pending or threatened litigation.
3. Drafts created by lawyers.
4. Documents reflecting intellectual property advice or edits to documents to address intellectual property concerns.
5. Communications to and from outside counsel or their designees.
6. Communications directly between in-house counsel and non-lawyers requesting or providing legal advice.
7. Communications between or among only Bard legal department lawyers and staff.

DATED this 12th day of February, 2016.

GALLAGHER & KENNEDY, P.A.

By: s/ Robert S. Boatman

Robert W. Boatman (009619)
Paul L. Stoller (016773)
Shannon L. Clark (019708)
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Ramon Rossi Lopez
(admitted *pro hac vice*)
CA Bar No. 86361
LOPEZ McHUGH LLP
100 Bayview Circle, Suite 5600
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Richard B. North, Jr. (admitted *pro hac vice*)
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201 17th Street, NW / Suite 1700
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SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202

Attorneys for C. R. Bard, Inc. and Bard
Peripheral Vascular, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2016, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/ Mathew B. Lerner